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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 22.03.2024

\+ CRL.A. 513/2019

AMIT BAHL ..... Appellant

Through: Mr. Akshat Dabral and Ms. Apurva Nagpal, Advs.

versus

M/S SIDH POLYWRAPS ..... Respondent

Through: Ms. Kamlakshi Singh, Mr. Saundarya Singh and Ms. Parijat Kumar, Advs.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

JUDGMENT

VIKAS MAHAJAN, J. (ORAL)

1. The leave to appeal was granted by this Court vide order 12.04.2019 under Section 378(4) CrPC against the impugned judgment dated 19.12.2023 whereby the complaint of the appellant was dismissed and the respondent/accused was acquitted of the offence under Section 138 of the NI Act.

2. The complaint was filed by the appellant under Section 138 of NI Act alleging that he is engaged in the business of manufacturing of polythene bags and tubes and printing on the same. The respondent Ashwani Sharma is stated to be the proprietor of M/s Sidh Polywraps and is stated to be engaged in the business of polybags and tubes.

3. It was further alleged in the complaint that to meet the requirements of his business respondent/accused used to take raw materials from the appellant/complainant on credit basis from time to time. The respondent/accused issued two cheques – first bearing no. 654461 dated 10.09.2004 for an amount of Rs.10,000/- and the second cheque no. 620794 dated 01.02.2005 for an amount of Rs. 2 lacs, both drawn on Bank of India, Okhla Industrial Estate Branch, New Delhi, in discharge of his liability.

4. The appellant/complainant presented the said two cheques in his bank. The cheque bearing no. 654461 was returned unpaid with remarks "refer to drawer" and the cheque bearing no. 620794 was returned unpaid with remarks "funds insufficient".

5. The appellant issued legal notice dated 04.03.2005 to the respondent through registered post and despite service of the said legal notice, the amount of the cheque was not paid by the respondent, therefore, the complaint under Section 138 of NI Act came to be filed by the appellant against the respondent.

6. Notice was framed in the case and the appellant/complainant produced himself as CW-1 and tendered his affidavit in evidence Ex. CW1/A. Thereafter, he was cross-examined and was discharged. Appellant/complainant also produced Sh. Gulshan Rai, Computer Operator in Bank of India, as CW2, who was examined and cross-examined. Thereafter, the appellant/complainant closed his evidence.

7. In support of his defence, the accused examined himself as DW-1, as well as, Sh. Arvind Kumar Rajak, Clerk of Bank of India, Okhla Industrial Estate Branch as DW-2.

8. During his cross-examination, DW-1 deposed that the bank account

maintained by the respondent/accused with the Bank of India was closed in the year 2004 after the manufacturing business of plastic was closed in the year 2002-2003. Incidentally, the cheques in question were presented in the year 2005.

9. The statement of the respondent/accused was thereafter recorded under Section 313 CrPC read with Section 281 CrPC. In his said statement, he stated that – (i) the cheques in question were not given by the respondent/accused but rather the same were removed from his office by the complainant, (ii) the respondent/accused has no liability toward the complainant, and (iii) the complainant used to take goods from the respondent/accused and the cheques in question have been filled by the complainant himself and he identify the complainant's handwriting.

10. After sifting the evidence, the learned Trial Court recorded a finding that since the signatures on the cheques are admitted by the respondent/accused, therefore, the presumption under Section 138 of NI Act will arise.

11. The learned Trial Court noted that the respondent/accused deposed that he himself used to supply material to the complainant against bills and the complainant used to issue cheques to him. He produced the ledger book maintained by him Ex. AW1/1 and also produced reply dated 18.03.2005 Ex. AW1/1 to the legal notice dated 04.03.2005. Even the complainant in his cross-examination admitted that accused used to sell goods to him. Thus, the Court observed that the accused has been able to probabilize his defence.

12. The learned Trial Court also noticed that the complainant/CW1 during his cross-examination admitted that he did not place any bill on record for

supply of the material to the accused though he stated the he maintains the account and the said bills are entered in the account statement.

13. The learned Trial Court also recorded a finding that ledger account Ex.DW1/C1 produced by the complainant is a computer printout which is not supported by any certificate under Section 65B of the Evidence Act, therefore, the same is not admissible in evidence.

14. Eventually it was held by the learned Trial Court that the accused has been able to raise the probable defence that the cheques were not issued for any legally recoverable debt or liability. Simultaneously, it was also held that the complainant did not produce any bills or the invoices raised against the accused and the so called ledger Ex. DW1/C1 is not properly proved for want of certificate under Section 65B of the Evidence Act.

15. The findings recorded by the learned Trial Court reads thus:

> *"14. During cross-examination of CW1 Sh. Amit Bahl, he has deposed that he did not place any bill on record for supply of the material to the accused though he stated that he maintains the account and the said bills are entered in the account statement. He further deposed during his cross-examination that accused used to sell goods to him. He further deposed that he also used to supply goods to the accused. Examining the deposition of the complainant and the evidence produced by the accused through his own testimony, this court finds that the accused has been able to probabalise his defence that it was the accused who used to sell goods to the complainant witness as the complainant has himself admitted during his cross-examination that accused used to sell goods to him. The complainant has failed to produce any bill raised by him for supply of material to the accused. The ledger account Ex.DW1/C1 is a computer printout and is not supported by any certificate U/s. 65B of the Evidence Act. The electronic records are*

*admissible only in terms of Section 65B of the Evidence Act. Either a certificate, as required under sub-section (4) of Section 65B of the Evidence Act is to be produced, or anv witness should testifv that the conditions specified under sub-section of Section 65B of the Evidence Act were met with. (**See Devender Kumar Yadav v. Jagbir Singh @ Tony Crl.A. 690/2011, decided on July 20, 2012, Delhi High Court (DB), Brij Kishore v. State Crl. A. 927/200 8, decided on 10th May 2010 Delhi High Court (DB), Babu Ram Aggarwal v. Krishan Kumar Bhatnagar CS(OS) 86/2009, decided on 24th January 2013, Delhi High Court).** However, neither any certificate under Section 65B(4) has been produced nor any testimony satisfying conditions under Section 65B(2) of the Evidence Act has been made in support of the ledger Ex. DW1/C1. Therefore, The ledger Ex. DW1/C1 is not admissible in evidence due to non-production of certificate under Section 65B of the Evidence Act. Hence, the complainant has not been able to prove its case. Therefore, the accused has been able to raise probable defence that the cheques Ex.CW1/3 and Ex.CW1/6 were not issued for any legally recoverable debt or liability.*

*15. Since the accused has been able to rebut the presumption raised U/s. 139 of the NI Act in respect of both the cheques, onus shifts on the complainant to prove its case beyond reasonable doubt that the cheques were issued in discharge of legally recoverable debt or liability. {**See Pine Product Industries v. RP Gupta 2007(94) DRJ 352**). However, the complainant has not produced any bills or the invoice raised against the accused. In fact, the ledger Ex.DW1/C1 produced is not properly proved by the complainant. In the absence of any material on record to show that the goods were supplied by the complainant to the accused, this court finds that the complainant has failed to prove his case that the cheques Ex.CW1/3 and Ex.CW1/6 were issued in* *discharge of legally recoverable debt or liability. Accused is acquitted....”*

(emphasis supplied is by the Trial Court)

16. I have examined the evidence with the assistance of the learned counsel for the parties and have also gone to the judgment of the learned Trial Court. There is evidence in the form of ledger book Ex. AW-1/1 which shows the supply of material by the respondents/accused to the complainant. That apart there is also an admission of the complainant in his cross-examination that the accused used to sell goods to the complainant. On the other hand, the complainant failed to produce and prove the bill and invoices raised against the accused. He also failed to prove the statement of account despite admitting that he maintains the account statement and the bills regarding supply of material to the accused were entered in the account statement. The ledger Ex.DW1/CW1 produced by the complainant was rightly held by the learned Trial Court to be inadmissible in evidence for want of supporting certificate under section 65B of the Evidence Act.

17. Thus, the view taken of the evidence by the learned Trial Court is a plausible view and no perversity has been pointed out in the same.

18. It is trite law that the scope of interference in an appeal against acquittal is very limited. Unless it is found that the view taken by the Court is impossible or perverse, it is not permissible to interfere with the finding of acquittal. Equally if two views are possible, it is not permissible to set aside an order of acquittal, merely because the Appellate Court finds the view of conviction to be more probable. The interference would be warranted only if the view taken is not possible at all.[1]

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[1] 2022 SCC OnLine SC 984

19. In view of the above, I do not find any infirmity in the impugned judgment and no interference is warranted.

20. Accordingly, there is no merit in the appeal and the same is dismissed.

VIKAS MAHAJAN, J

MARCH 22, 2024
dss